

mission. Our men and women are in harm's way and our mission is freedom and security in Iraq. The critics of this war, do they want us to cut and run? Do they want to create a place of instability, a haven for terrorism? I can't believe that.

Someone once said a critic is someone who thinks he knows the way but doesn't know how to drive the car. It is not a time for critics. Let us deal with this terrible incident. Let us show America has standards and America is there for a reason. The reason is one of hope. The reason is one of freedom. What occurred is something that will never occur again. I am confident our President will make sure of that.

At the same time, we have to stand with our President, stand with our troops. Teddy Roosevelt once said it is not the critic who counts, but it is the person in the arena. It is a tough arena right now. But the cause is just. We have lost life and it is a sacrifice, but the cause is just. We have seen that with Qadhafi giving up his nuclear weapons programs, Iran understanding the serious consequences of their action.

Let us be true to the cause. Let us ferret out those who committed these reprehensible acts. Let us support the President going forth to the world, to the Arab community, to say this is wrong. Let us continue to stay true to the course, to understand that the lives that have been sacrificed have not been sacrificed in vain, that the world is safer today. It is safer with Saddam gone. It will be safer with peace and stability and democracy in the Middle East.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there any further morning business? If not, morning business is closed.

JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1637, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1637) to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization findings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

Pending:

Dorgan amendment No. 3110, to provide for the taxation of income of controlled foreign corporations attributable to imported property.

Graham (FL) amendment No. 3112, to strike the deduction relating to income attributable to United States production activities and the international tax provisions and allow a credit for manufacturing wages.

Cantwell/Voinovich amendment No. 3114, to extend the Temporary Extended Unemployment Compensation Act of 2002.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 3117

Mr. BREAU. Mr. President, I call up an amendment that is at the desk, No. 3117, Breau-Feinstein.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAU] proposes an amendment numbered 3117.

Mr. BREAU. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To limit the amount of deferred foreign income that can be repatriated at a lower rate)

On page 88, between lines 17 and 18, insert:“(4) DOLLAR LIMITATION.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), the excess qualified foreign distribution amount shall not exceed the lesser of—

“(i) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

“(ii) the excess (if any) of—

“(I) the estimated aggregate qualified expenditures of the corporation for taxable years ending in 2005, 2006, and 2007, over

“(II) the aggregate qualified expenditures of the corporation for taxable years ending in 2001, 2002, and 2003.

“(B) EARNINGS PERMANENTLY REINVESTED OUTSIDE THE UNITED STATES.—

“(i) IN GENERAL.—If an amount on an applicable financial statement is shown as Federal income taxes not required to be reserved by reason of the permanent reinvestment of earnings outside the United States, subparagraph (A)(i) shall be applied by reference to the earnings to which such taxes relate.

“(ii) NO STATEMENT OR STATED AMOUNT.—If there is no applicable financial statement or such a statement fails to show a specific amount described in subparagraph (A)(i) or clause (i), such amount shall be treated as being zero.

“(iii) APPLICABLE FINANCIAL STATEMENT.—For purposes of this paragraph, the term ‘applicable financial statement’ means the most recently audited financial statement (including notes and other documents which accompany such statement)—

“(I) which is certified on or before March 31, 2004, as being prepared in accordance with generally accepted accounting principles, and

“(II) which is used for the purposes of a statement or report to creditors, to shareholders, or for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before March 31, 2004.

“(C) QUALIFIED EXPENDITURES.—For purposes of this paragraph, the term ‘qualified expenditures’ means—

“(i) wages (as defined in section 3121(a)),

“(ii) additions to capital accounts for property located within the United States (including any amount which would be so added but for a provision of this title providing for the expensing of such amount),

“(iii) qualified research expenses (as defined in section 41(b)) and basic research payments (as defined in section 41(e)(2)), and

“(iv) irrevocable contributions to a qualified employer plan (as defined in section 72(p)(4)) but only if no deduction is allowed under this chapter with respect to such contributions.

“(D) RECAPTURE.—If the taxpayer's estimate of qualified expenditures under subparagraph (A)(ii)(I) is greater than the actual expenditures, then the tax imposed by this chapter for the taxpayer's last taxable year ending in 2007 shall be increased by the sum of—

“(i) the increase (if any) in tax which would have resulted in the taxable year for which the deduction under this section was allowed if the actual expenditures were used in lieu of the estimated expenditures, plus

“(ii) interest at the underpayment rate, determined as if the increase in tax described in clause (i) were an underpayment for the taxable year of the deduction.

“(5) LIMITATION ON CONTROLLED FOREIGN CORPORATIONS IN POSSESSIONS.—In computing the excess qualified foreign distribution amount under paragraph (1) and the base dividend amount under paragraph (2), there shall not be taken into account dividends received from any controlled foreign corporation created or organized under the laws of any possession of the United States.

Mr. BREAU. Mr. President, this is a jobs bill. That is the title of the bill. Presumably a jobs bill is intended to create jobs and hopefully is created to create jobs in America. That is the legislation that is before us. It is absolutely essential that this legislation be adopted.

But one of the provisions in the legislation gives me great concern. I offered an amendment in the Finance Committee. It was unanimously supported by every single Democrat in the Finance Committee and it lost by a partisan vote because our Republican colleagues at that time did not feel they could support the amendment I offered. It was unanimously supported by every single Democrat member of the Finance Committee.

The question deals with how we treat companies that have earnings they have stashed away in foreign countries. These amounts of money, many of them, are in fact earned overseas. Companies know if they bring those earnings back to the United States, the United States, on a worldwide tax basis, will tax those earnings with a deduction for the amount of tax they have paid in the country in which they earned those revenues. They pay the regular corporate rate minus the tax credit they get for having paid taxes on those earnings in the foreign country. However, there is no tax consequence to those companies if the money in fact stays in the foreign country. That is called deferral. We defer any U.S. tax on foreign earnings as long as the earnings stay in the foreign country in which they are earned.

The legislation before this body now says we are going to give a very special break to U.S. companies that have money overseas, in many cases in tax havens. We are going to let you bring that money back, not as other companies in the past have brought it back,